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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,081	08/12/2002	David Foster	DHN/322/PCT/US	9278

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EXAMINER
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BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 12/04/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/069,081

Applicant(s)

FOSTER ET AL.

Examiner

Luan K Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7. 6) ☐ Other: .

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*Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

2. The specification is objected to under 37 CFR 1.71, as failing to provide an adequate written description of the invention and failing to adequately teach how to make and/or use the invention, i.e. failing to provide an enabling disclosure because the application fails to provide how is the cement come out of the inner housing prior of mixing? and where is the liquid located prior of mixing?

3. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention as set forth above.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 10-14 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morini (6,148,996) or Bowes et al. (3,156,369; hereinafter Bowes'369) in view of Kindt-Larsen et al. (5,114,240; hereinafter Kindt-Larsen'240). Morini discloses an apparatus for keeping products separate prior of mixing comprising an outer housing (1) containing a liquid defining a mixing chamber and an inner housing (3) containing a powder. The inner housing is removable from the outer housing such that the powder remains in the mixing chamber (Figures 1-4). Morini further discloses the outer housing having a cap (13) and the inner housing attached to the cap such that the cap and the inner housing can be removed from the outer housing together. Bowes'369 shows an apparatus for keeping products separate prior of mixing comprising an outer housing (11) containing a liquid defining a mixing chamber and an inner housing (15) containing a powder. The inner housing is removable from the outer housing such that the powder remains in the mixing chamber (Figures 1-4). Bowes'369 further discloses the outer housing having a cap (13) and the inner housing attached to the cap by means of a snap fit arrangement between a flange (21) and a groove 925) such that the cap and the inner housing can be removed from the outer housing together. Morini or Bowes'369 also discloses the other claimed limitations except for the powder being cement. Kindt-Larsen'240 teaches an apparatus

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for keeping products separate prior of mixing comprising an outer housing (18) containing a liquid defining a mixing chamber and an inner housing (10) containing cement. The inner housing having venting means (16) and a feather tip seal (28, 29) for sealing against the outer housing. It would have been obvious to one having ordinary skill in the art in view of Kindt-Larsen'240 to modify the apparatus of Morini or Bowes'369 so the powder comprises cement to provide more convenient for the apparatus for holding various components. Claim 10 is drawn to the obvious method of using the apparatus of Morini or Bowes'369 as modified.

6. Claims 8, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-3 above, and further in view of Frankel et al. (4,015,945; hereinafter Frankel'945). Morini or Bowes'369 further fails to show the outer housing being in the form of a bowl shaped mixing chamber. Frankel'945 shows a device for mixing bone cement comprising a bowl shaped mixing chamber. It would have been obvious to one having ordinary skill in the art in view of Frankel'945 to modify the outer housing of Morini or Bowes'369 so the outer housing comprises a bowl shaped mixing chamber to facilitate mixing. The mixing chamber of Morini or Bowes'369 is capable of using with a mixing mechanism comprising a blade arrangement rotatable around the chamber.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 872-9301. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb  
November 28, 2003



Luan K. Bui  
Primary Examiner